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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

NOV - 8 2000

**CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD KREHBIEL,

Defendant.

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CRIMINAL NO. 00-16

JURY INSTRUCTIONS

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PRELIMINARY INSTRUCTION NO.1 -PRELIMINARY INSTRUCTIONS

Members of the jury, before the lawyers make their opening statements, the court gives you these preliminary instructions to help you better understand what will be presented to you and how you should conduct yourselves during the trial. You are to consider these instructions, together with any oral instructions given to you during the trial and the written instructions given at the end of the case, and apply them as a whole to the facts of the case. In considering these instructions, you will attach no importance or significance whatever to the order in which they are given.

PRELIMINARY INSTRUCTION NO.2 – GENERAL INTRODUCTION

This is a criminal case, brought by the United States of America against defendant Richard Krehbiel. The United States of America charges the defendant with the crime of conspiracy to distribute and possess with the intent to distribute a controlled substance. The defendant has plead not guilty to that charge.

In the Final Instructions, I will give you further explanations of the elements of this crime charged and provide you with definitions of important terms.

The charge against the defendant is set forth in what is called an **indictment**. You should understand that an indictment is simply an accusation. It is not evidence of anything. The defendant has plead not guilty to the offense charged, and is presumed to be innocent unless and until the government proves guilt beyond a reasonable doubt.

It will be your duty to decide from the evidence whether the defendant, Richard Krehbiel, is guilty or not guilty of the crime charged against him. It is your duty to find from the evidence what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

Furthermore, your verdict must be based solely on the evidence developed at the trial or the lack of evidence. In reaching your decision as to whether the government has sustained its burden of proof, it would be improper for you to consider any personal feelings you may have about the defendant's race, religion, national origin, sex or age. All persons are entitled to the presumption of innocence and the government has the burden of proof, as I will discuss in a moment. It would be equally improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process. To repeat, your verdict must be based exclusively upon the evidence or lack of evidence in the case.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think the verdict should be.

Finally, please remember that only the named defendant, Mr. Krehbiel, not anyone else, is on trial here, and that the defendant is on trial only for the crime charged against him, and not for anything else.

PRELIMINARY INSTRUCTION NO.3 -- OUTLINE OF TRIAL

The trial will proceed in the following manner:

After I conclude with these preliminary instructions, the government's attorney may make an opening statement. Next the attorney for the defendant may, but is not required to, make an opening statement. An opening statement is not evidence, but is simply a summary of what the attorney expects the evidence to be.

The government will then present evidence and the defendant's lawyer may, but has no obligation to, cross-examine. Following the government's case, the defendant may, but is not required to, present evidence. If the defendant calls witnesses, the government may cross-examine them.

After presentation of evidence is completed, the court will instruct you further on the law. The attorneys will then make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. After that, I will provide you with some instructions on deliberations, and you will then retire to deliberate on your verdict.

PRELIMINARY INSTRUCTION NO. 4 — PRESUMPTION OF INNOCENCE

The defendant Richard Krehbiel is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest or charge of Mr. Krehbiel or the fact that he is here in court. The presumption of innocence remains with Mr. Krehbiel throughout the trial and alone is sufficient to find him not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against the defendant.

PRELIMINARY INSTRUCTION NO.5 -- EQUALS IN COURT

The fact that this indictment is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than any other litigant would get, but by the same token, the United States is entitled to no less consideration. The issues in this case must be decided on the evidence and on the law. The government and the defendant stand alike as equals before you and this court. No party is entitled to sympathy or favor.

PRELIMINARY INSTRUCTION NO.6 -- DEFINITION OF EVIDENCE

You shall base your verdict only upon the evidence and these and other instructions which I give you during the trial.

Evidence is:

1. Testimony of witnesses
2. Exhibits received by the Court
3. Stipulations,
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

If you have exhibits to consider as evidence, in deciding whether and how to rely on any such exhibit, you should evaluate its contents and its relationship to the other evidence in the case. The fact that an exhibit may be given to you for your inspection does not mean that you must rely on it more than you rely on the testimony of the witnesses.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you if that occurs, and instruct you on the purposes for which the item can

and cannot be used.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

Likewise, the weight of the evidence should not be determined by the number or volume of documents or exhibits introduced by either the prosecution or the defendant. Neither their volume and number, nor the fact that they are in written form, should result in the documents or exhibits being given any greater consideration than any other evidence admitted in this case.

PRELIMINARY INSTRUCTION NO.7 -- CREDIBILITY OF WITNESSES

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony, the extent to which their testimony is consistent with other evidence that you believe, and anything else that will help you decide what testimony to believe.

PRELIMINARY INSTRUCTION NO.8 - DUTY OF JURY

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

PRELIMINARY INSTRUCTION NO.9 - DIRECT & CIRCUMSTANTIAL EVIDENCE

Some of you may have heard the terms direct and circumstantial evidence. You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it deserves.

PRELIMINARY INSTRUCTION NO.10 - BENCH CONFERENCES

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom or calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

PRELIMINARY INSTRUCTION NO.11 - CONDUCT OF THE JURY

Finally, to ensure fairness, you as jurors must obey the following rules:

First, do not talk amongst yourselves about the case, or about anyone involved in it, until the end of the case when you go to the jury room to decide your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk with you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk to or speak with any of the parties involved in this case - you should not even pass the time of day with them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If any lawyer, party or witness does not speak with you when you pass in the hall, it is because they are not suppose to visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved in it, or listen to any radio or television reports about the case or anyone involved in it.

Sixth, do not do any research to make any investigation about this case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

INTRODUCTION

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

**DESCRIPTION OF CHARGE; INDICTMENT NOT EVIDENCE; PRESUMPTION OF
INNOCENCE**

The indictment in this case charges that the defendant committed the crime of conspiracy to distribute or possess a controlled substance with the intent to distribute. The defendant has pleaded not guilty to that charge.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the Government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon a defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

**FINAL INSTRUCTION NO. 1 — COUNT I: CONSPIRACY TO DISTRIBUTE OR
POSSESS A CONTROLLED SUBSTANCE WITH THE INTENT TO DISTRIBUTE
(ESSENTIAL ELEMENTS)**

The crime of conspiracy to distribute or possess a controlled substance with the intent to distribute, as charged in Count I of the indictment, has three essential elements, which are:

1. From about January 27, 1999 until about September 10, 1999, two or more persons reached an agreement or came to an understanding either to distribute a controlled substance, or possess a controlled substance with the intent to distribute;
2. The defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and
3. At the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

The phrase “agreement or understanding” is defined in Final Instruction No. 2.

The phrase “distribution of a controlled substance” is defined in Final Instruction No. 3.

The phrase “possession of a controlled substance with the intent to distribute” is defined in Final Instruction No. 4.

For you to find the defendant guilty of this crime, the Government must prove all of these essential elements beyond a reasonable doubt. (The phrase “reasonable doubt” is defined in Final Instruction No. 5). If you find the Government has proven beyond a reasonable doubt that the conspiracy as alleged in Count I of the indictment involved 100 grams or more of a mixture or substance containing heroin then you shall mark the verdict form accordingly.

If the Government has not proven its case beyond a reasonable doubt, you must find the defendant not guilty of the crime of conspiracy.

FINAL INSTRUCTION NO. 2 — “AGREEMENT OR UNDERSTANDING” – DEFINED

The Government must prove that defendant reached an agreement or understanding with at least one other person.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you

must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others.

**FINAL INSTRUCTION NO. 3 — “DISTRIBUTION OF A CONTROLLED
SUBSTANCE” – DEFINED**

The following elements comprise the crime of distribution of a controlled substance:

1. A person intentionally transfers a controlled substance to another individual; and
2. At the time of the transfer, the person knew that the substance he transferred to the other individual was a controlled substance.

It is not necessary for the Government to prove that any member of the conspiracy committed the offense of distribution of a controlled substance. The government is only required to prove the elements of the offense of conspiracy as explained for you in Final Instruction No. 1.

**FINAL INSTRUCTION NO. 4 — “POSSESSION OF A CONTROLLED SUBSTANCE
WITH INTENT TO DISTRIBUTE” – DEFINED**

The crime of possession of a controlled substance with intent to distribute has three essential elements, which are:

1. A person was in possession of the controlled substance, and;
2. The person intended to distribute some or all of the controlled substance to another person.
3. The person intended to distribute some or all of the controlled substance to another person.

Once again, it is not necessary for the Government to prove that any member of the conspiracy committed the offense of possession of a controlled substance with the intent to distribute. The Government is only charging, and therefore is only required to prove, the elements of the offense of conspiracy as defined in Final Instruction No. 1.

FINAL INSTRUCTION NO. 5 — “REASONABLE DOUBT” – DEFINED

As I stated before, the Government must prove all the essential elements of conspiracy beyond a reasonable doubt.

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it.

However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**FINAL INSTRUCTION NO. 6 -- TESTIMONY FROM A WITNESS WHO HAS
PLEADED GUILTY**

You have heard evidence that witness Daniel Davis and witness Tyrone Rekshy~~n~~ski have pleaded guilty to a crime which arose out of the same events for which the defendant is on trial here. You must **not** consider either of those guilty pleas as any evidence of Richard Krehbiel's guilt. You may consider the witnesses' guilty pleas only for the purpose of determining how much, if at all, to rely upon each witnesses' testimony.

**FINAL INSTRUCTION NO. 7 — TESTIMONY UNDER A GRANT OF IMMUNITY
OR PLEA BARGAIN**

You have heard evidence that Daniel Davis and Tyrone Rekshynski have each made a plea agreement with the Government and that each of them hopes to receive a reduced sentence on criminal charges against him in return for his cooperation with the Government. Their testimony was received in evidence and may be considered by you.

You are instructed that the law provides that when a witness enters into an agreement with the Government, the prosecutor handling this witness's case can choose to file a motion with the Court if the prosecutor believes that the witness provided substantial assistance. The motion would ask the Court to reduce the witness's sentence below the sentence which would otherwise be provided by law. The judge has no power to reduce a sentence for substantial assistance unless the Government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the Government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

As with the testimony from any other witness, you may give each witness's testimony such weight as you think it deserves. You may accept all of it, reject all of it, or accept some parts and not others. Whether or not each witness's testimony may have been influenced by the plea agreement made with the Government is for you to determine.

FINAL INSTRUCTION NO. 8 — OPINION EVIDENCE, EXPERT TESTIMONY

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods use, and all the other evidence in the case.

**FINAL INSTRUCTION NO. 9 — USE OF CHARTS, SUMMARIES, AND OTHER
VISUAL AIDS**

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts, summaries or other visual aids and instead determine the facts from the books, records, or other underlying evidence.

FINAL INSTRUCTION NO. 10 — RULES CONCERNING YOUR DELIBERATION

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the Government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have

given to you in my instructions. The verdict whether guilty or not guilty must be unanimous.

Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

FINAL INSTRUCTION NO. 11 — FORM OF VERDICT .

Submitted to you with these instruction is the verdict form. When you reach your verdict, have your foreperson sign the appropriate verdict form.

All twelve jurors must agree to the verdict reached.

When you have reached your verdict notify the marshal.

ENTERED this 8th day of November, 2000.



ROBERT W. PRATT
U.S. DISTRICT JUDGE